

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

NICOLE A. GIBSON,

Defendant-Appellant.

UNPUBLISHED

February 13, 1998

No. 198977

Recorder's Court

LC No. 95-011223

Before: McDonald, P.J., and Saad and Smolenski, JJ.

PER CURIAM.

Defendant appeals as of right her jury conviction of negligent homicide, MCL 750.324; MSA 28.556. The trial court sentenced defendant to sixteen to twenty-four months' imprisonment. We affirm.

First, defendant argues the trial court erred in instructing the jury that it could find defendant guilty of negligent homicide if her actions were "a substantial," rather than "the substantial" cause of the victim's death. Defendant did not object at trial. Failure to object precludes appellate review absent manifest injustice. *People v VanDorsten*, 441 Mich 540, 544-545; 494 NW2d 737 (1993); *People v Haywood*, 209 Mich App 217, 230; 530 NW2d 497 (1995). Manifest injustice is not present here because the instruction was proper. *People v Tims*, 449 Mich 83, 96-97; 534 NW2d 675 (1995); *People v Anderson*, 450 Mich 922; 542 NW2d 868 (1995); *People v Stewart (On Remand)*, 219 Mich App 38, 41; 555 NW2d 715 (1996).

Next, defendant argues that there was insufficient evidence to convict defendant of negligent homicide because there was no evidence to show that defendant's conduct was the proximate cause of the victim's death. We disagree. In this case, the evidence was sufficient for a reasonable jury to find beyond a reasonable doubt that defendant's actions were a substantial cause of the accident. *People v Wolfe*, 440 Mich 508, 515; 498 NW2d 748 (1992); *Tims, supra* at 96-97; *Anderson, supra*; *Stewart, supra* at 41.

The prosecution presented evidence that after a confrontation between defendant's companion, Wendy Smith, and the victim in a bar parking lot, defendant followed the victim after she entered her

vehicle and attempted to leave. When the victim attempted to flee defendant, defendant pursued her. The testimony established that defendant was within a car's length from the victim's vehicle for over two miles and the cars attained speeds of eighty miles per hour. The speeds escalated, and the victim disregarded a red light and collided with a tractor-trailer truck.

Defendant contends there was no evidence placing her at the exact scene of the accident; therefore, it is inconceivable that her conduct could have caused the accident. Even assuming that defendant abandoned her pursuit at the Annapolis intersection, one-half mile from the accident, the jury could still have concluded that defendant's conduct was a substantial cause of the accident. The jury could have reasonably found that there was insufficient time for the forces created by defendant, which compelled the victim to flee at a high rate of speed, to have sufficiently subsided even if defendant stopped chasing the victim one-half mile from the accident.

We also reject defendant's argument attacking the credibility of the prosecution's witnesses. This was an issue for the jury that we will not resolve anew. *People v Vaughn*, 186 Mich App 376, 380; 465 NW2d 365 (1990).

Next, defendant argues the trial court abused its discretion when it admitted several alleged hearsay statements. Defendant first argues that three witnesses were improperly allowed to testify that defendant's companion, Wendy Smith, made threats to the victim. These statements were not offered to prove the truth of the matter asserted, but rather, were offered to show their effect on the listener, in this case the victim. A statement offered for this purpose is not hearsay and may be properly admitted. MRE 801(c); *People v Byrd*, 207 Mich App 599, 603; 525 NW2d 507 (1994).

Defendant further argues that the truck driver's testimony that he heard somebody at the scene of the accident state, "We can't leave them here," was also improperly admitted. The truck driver was unable to identify who made the statement. Defendant contends the testimony was prejudicial because the jury would find that the statement was made by defendant and then conclude that she must have been at the actual scene of the collision. Defendant's argument lacks merit because if the statement was her own, it was not hearsay. MRE 801(d)(2).

Next, defendant contends that she was denied effective assistance of counsel because her trial counsel failed to object to the jury instruction on causation and TO much of the testimony regarding Smith's threats toward the victim. Because we find that the jury instruction was proper and the testimony admissible, trial counsel's failure to object does not constitute ineffective assistance of counsel. Defense counsel was not required to raise meritless objections and counsel made no serious mistake without which defendant might have had a reasonably likely chance of acquittal. *People v Gist*, 188 Mich App 610, 613; 470 NW2d 475 (1991); *People Heard*, 178 Mich App 692, 703; 444 NW2d 542 (1989).

Finally, defendant challenges her sentence, arguing that it was disproportionate, not individually tailored, and based upon improper factors. These issues are moot because defendant

has already served her minimum sentence. *People v Rutherford*, 208 Mich App 198, 204; 526 NW2d 620 (1994). Accordingly, we decline to review these issues.

Affirmed.

/s/ Gary R. McDonald

/s/ Henry William Saad

/s/ Michael R. Smolenski